

September 22, 2017

VIA Electronic Submission
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
44 12th Street SW
Washington, D.C., 20554

Re: Reply Comments on Second Notice of Inquiry Regarding Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59.

Dear Ms. Dortch,

The Consumer Bankers Association (“CBA”)¹ appreciates the opportunity to respond to the Federal Communication Commission’s (“Commission”) Notice of Inquiry (“NOI”) regarding Advanced Methods to Target and Eliminate Unlawful Robocalls² regarding potential plans to make reassigned telephone number information available to our members.

CBA appreciates the Commission’s efforts to combat illegal robocalls through this and other proceedings put forth in recent months. CBA has long agreed with the Commission that robocalls can often place a timely and annoying burden on consumers. However, we encourage the Commission to reconsider the use of terms such as “robocalls” and “robocallers” in future publications related to this effort. Often, these terms create a negative perception of caller intent and activity. However, many autodialed calls are made by non-fraudulent businesses with which consumers already have relationships and provided consent to receive calls. For example, CBA’s members may use autodialers to reach customers with time-sensitive, critical information, which helps customers protect their financial interests in a cost effective manner. The Commission should make clear in future proceedings that attempts to address robocalls will not also inadvertently curb legitimate businesses from contacting consumers with information to which the consumer has consented, and often requested.

CBA applauds the purpose of the Commission’s NOI on a reassigned numbers database. We hope this tool will be of great use to our members attempting to contact their customers. Generally, the aims of the NOI could do much to help our members more reliably contact their intended audience, and lessen instances of costly litigation often related to the Telephone Consumer Protection Act (“TCPA”). However, CBA cautions the Commission to consider potential unforeseen burdens that could be placed on legitimate callers through the database’s implementation. As such, we ask the Commission to consider safe-harbor provisions for those

¹ The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

² Second Notice of Inquiry, *In the Matter of Advance Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59 (Rel. July 13, 2017).

companies that use the database, if created. CBA also recommends the Commission install such a database at little to no cost to its users. Additionally, CBA asks the Commission to promote voluntary, not mandatory, use of the database.

CBA acknowledges the Commission's NOI asks for comments specific to the issues posed in the proceeding. However, it is important to raise that many of the issues related to the implementation of a reassigned numbers database are substantially similar to the issues under review by the D.C. Circuit Court in *ACA International v. FCC*. The Commission should remain cognizant of this case as it proceeds. The Commission, CBA members, and many other companies will benefit from a comprehensive solution to the reassigned numbers problem. We offer the following comments on the Commission's specific inquiries.

I. The Commission Should Provide Access to the Reassigned Numbers Database at Low or No Cost.

Currently, CBA's members operate within the restrictions of the TCPA, and use auto-dialing technology to contact those customers who have already consented to such communications. Once our members realize the contact information they have for a customer is no longer accurate, they take steps to stop calling the unintended individual, and mark the contact information as incorrect in their systems to avoid future unwanted communication. However, companies that operate in violation of the TCPA are unlikely to take steps to comply with the law, and as such, would likely not use the proposed reassigned numbers database. This would lead for the database's primary users to be those companies who already operate within the confines of the law, and would likely place the majority of the costs of maintaining the database on these lawful users. Those companies fraudulently contacting consumers (and often who the Commission is trying to "Target & Eliminate")³ will not be curbed by the establishment of a reassigned numbers database, and only those attempting to further comply with the law will use such a resource. As such, CBA recommends that in establishing a reassigned numbers database, the Commission provides the information to users at little to no cost to further incentivize compliance with the law, for both those callers already operating legally, and for those looking to come into the fold.

Additionally, undue costs for CBA's members will skyrocket if banks are charged and required to scrub their numbers against the database in real time. Even if the cost of checking the database is nominal, these costs will rise steeply if banks are required to check the database for every communication, regardless of purpose, hurting CBA's smaller members the most. These costs could ultimately leave consumers less informed about their financial well-being. For example, these costs could have major unintended consequences on vital communications such as fraud notices or low balance alerts. Providing access to the database at no cost will redress these concerns, and is imperative to the database's utility.

³ See *In the Matter of Advance Methods to Target and Eliminate Unlawful Robocalls*.

II. The Commission Should Promote Voluntary Use of the Reassigned Numbers Database by Providing a Safe-Harbor for Users.

CBA respectfully requests the Commission promote voluntary, not mandatory, use of the reassigned numbers database. We recommend the Commission provide a safe harbor from TCPA litigation to those companies that reasonably use the database to confirm telephone number quality. Requiring companies to check the reassigned numbers database would open them up to a whole new host of litigation concerns, which have been increasingly growing since the TCPA was enacted. Without a safe-harbor provision built in to the database, requiring companies to check the database could easily become a new minefield of potential TCPA litigation for callers, severely curbing their ability to legally and proactively contact consenting customers.

A safe-harbor provision against litigation (perhaps similar to the Do Not Call Registry safe-harbor provisions in the TCPA)⁴ would allow CBA's members to better assure they do not inadvertently contact a consumer who has not already consented to be contacted. However, for such a safe-harbor to be truly useful, it should be broad in scope, and not require callers to check it in real-time.

Further, a safe-harbor provision should be broad and all-encompassing to truly increase the value of a reassigned numbers database. For instance, the database proposes to help callers curb the amount of reassigned numbers they inadvertently contact; but the NOI does not address the challenges created when a consumer provides the wrong number to a caller. Often times, a customer may mistakenly submit incorrect contact information to a caller, and thus consent to have the caller reach out to a number that is not their own. CBA's members promptly address and make corrections when they learn they have erroneous contact information. However, wrong party contact as a result of consumer error can still leave callers open to litigation. Broadening the scope of a potential safe-harbor for those who use the database would greatly increase its use, and the use of the database as a whole.

III. The Commission Should Develop Practical and Operationally Feasible Guidelines for Using the Reassigned Numbers Database.

Many of CBA's member companies need to contact their customers in real-time, whether it be to notify them of a low account balance, or to check a transaction as fraudulent. For this reason, the Commission should not require callers to first check with the reassigned numbers database before placing these calls. Allowing for voluntary use of the database will allow CBA's members to timely and accurately notify consumers about a potential threat to their financial well-being. In the NOI, the Commission asks how voice service providers can best provide reassigned number information, and notes that when a number is disconnected, it remains on the

⁴ See 47 CFR 64.1200(c)(2)(i).

aging number list for no more than 90 days.⁵ As such, users of the reassigned numbers database should be permitted to scrub their contact lists against the database at a rate less frequent than the average age of an aging number, but not so frequently to become a burden on callers. For instance, if the average age of a number on the aging list is 60 days, callers should be permitted to scrub their numbers against the database every 30 days, as this would properly cover the majority of reassigned numbers over said period. The commission should not require callers to check the database in real time, or as frequently as every 24 hours, as this would be extremely burdensome, and lead to callers unable to provide the important communications many of their customers have consented to.

CBA believes the Commission will promote the effectiveness and utility of the database with practical and operationally feasible guidelines.

CBA greatly appreciates the Commission's consideration of the reassigned numbers database, and its continued efforts to combat fraudulent and often illegal robocalls. CBA reiterates that any reassigned numbers database should not be installed as a requirement for callers to check, should be provided at little to no cost to those who use it, and should provide a broad and wide-ranging safe-harbor against TCPA litigation for users. While CBA remains optimistic about the potential benefits of a reassigned numbers database, we remain wary of the potential unforeseen harms its use could push on to callers and consumers alike. Should you need further information or insight to any of the issues presented prior, please do not hesitate to contact the undersigned directly.

Sincerely,



Stephen Congdon
Regulatory Counsel
Consumer Bankers Association
scongdon@consumerbankers.com

⁵ *In the Matter of Advance Methods to Target and Eliminate Unlawful Robocalls*, citing 47 CFR § 52.15(f)(ii) (“Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days.”).